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FROHWITTER THREE RIVERWAY SUITE 500 HOUSTON, TX 77056			EXAMINER A, PHI DIEU TRAN	
			ART UNIT 3637	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 24

Application Number: 09/646,101  
Filing Date: December 07, 2000  
Appellant(s): SOBEK ET AL.

Felix J. D. Ambrosio  
For Appellant

**MAILED**

APR 6 - 2004

**GROUP 3600**

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 2/5/04.

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**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 18-24 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

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**(8) Claims Appealed**

A substantially correct copy of appealed claim 22 appears on page 9 of the Appendix to the appellant's brief. The minor errors are as follows: last line "said drive means" should have been "said driving means".

**(9) Prior Art of Record**

5463788	Ennis	11-95
3683441	Fromme	8-1972
5127123	Belanger	7-1992

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by

Ennis(5463788).

Ennis (figures 1-3) shows a device having a shank (52), a cap (20, 18) connected to the shank having a membrane having tensile strength and low flexural strength, a circular base surface( each layer of the membrane forming a circular base surface), driving means (54, 28) for

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driving said membrane, wherein said membrane defining a position of rest wherein it droops limply around said shank (figure 3) and an open position wherein it assumes an essentially horizontally position under the influence of centrifugal force generated due to the rotation of the membrane by the driving means, the driving means being an electric motor(54), said driving means being located at the head of the shank, the shank being fixed against relative rotation.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis (5463788) in view of Belanger (5127123).

Ennis shows all the claimed limitations except for the means clamping the membrane to the shank being two fixed disks.

Belanger (figure 6) shows two fixed disks clamping a membrane (35) to a shank(122).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ennis to show the means clamping the membrane to the shank being two fixed disks because using two fixed disks to clamp the membrane to the shank would strongly secure the membrane to the shank as taught by Belanger.

Ennis as modified shows all the claimed limitations.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis (5463788).

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Ennis shows all the claimed limitations except for the motor being pneumatic.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ennis to show the motor being pneumatic because pneumatic, electrical, hydraulic motors are well-known drive means for rotating a shaft.

Ennis as modified shows all the claimed limitations.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ennis (5463788) in view of Fromme (36834410).

Ennis shows all the claimed limitations except for the energy supply for the driving means being received in said shank.

Fromme shows the energy supply for the driving means (24, 10) being received in the shank (14).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ennis to show the energy supply for the driving means being received in said shank because routing an energy source through a tubular member to a driving means is well known in the art as it would enable nice, neat wire routing with the additional benefit of no wire entanglement with other surrounding moving structures.

Ennis as modified shows all the claimed limitations.

**(11) Response to Argument**

With respect to applicant's argument that Ennis does not show an umbrella-like cap, examiner respectfully disagrees. Ennis shows a structure that swings open when subjected to a

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rotational force. The structure when opened, covers an area below. It thus functions like an umbrella-like cap. It thus satisfies the claimed limitation of “umbrella-like cap”.

Applicant states that Ennis does not have “tensile strength” and “low flexible strength”, examiner respectfully disagrees. The membrane of Ennis flexes and hangs down. It thus has low flexible strength. If the membrane were to have “high flexible strength”, the membrane would not be able to flex and drop as shown. The membrane opens up when rotated and yet the membrane still attaches to the base/shaft. The membrane thus has “tensile strength”. If it were true that the membrane does not have “tensile strength”, the membrane would be flying off the shaft when rotated. The argument is thus moot.

With respect to applicant’s argument that the membrane does not have a “circular base surface”, examiner respectfully disagrees. The membrane is attached to a circular shaft. The part of the membrane, which forms the base, to attach to the shaft also must have a circular configuration as that of the shaft. The membrane thus has a “circular base surface” as claimed.

Applicant states that the umbrella-like cap “comprises a membrane” and a continuous structure, the brushes are not membranes as they do not comprise a continuous structure, examiner respectfully disagrees. First of all, the membrane (18, 20) each forms a continuous structure and a membrane. Secondly, continuous structure is not a claimed structure. The argument is thus moot.

With respect to applicant’s assertion that Ennis is not an umbrella as it discloses a mechanized automated vehicle washing apparatus, examiner respectfully points out that the reference teaches all the claimed limitations. Also, it is to be pointed out that the cap comprises of membranes each of which has a circular base as it is mounted against a circular shaft.

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Applicant states that Ennis does not show the driving means located at the end of the shank in claim 21, examiner respectfully points out that the driving means (54) is located at the head of the shank (52) as claimed in claim 20, not claim 21. The argument is thus moot.

With respect to applicant's argument that there is not reason to combine the references of the Ennis and Belanger as the two references teach radically different structures, examiner respectfully disagrees. First of all, Ennis teaches a structure having membranes attached to a rotary shaft. Belanger teaches a structure having rotary cloth attached to a rotary shaft. The references certainly teach the field of attaching a membrane to a rotary structure. The teachings in the references are thus not radically different to combine. The modification of Ennis with Belanger per the attachment of the membrane to the rotary shaft is proper. The motivation for such modification is also set forth above. Ennis as modified by Belanger teaches applicant's claimed umbrella-like cap structures. The argument is thus moot.

For the above reasons, it is believed that the rejections should be sustained.



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Respectfully submitted,



Phi Dieu Tran A

April 2, 2004

Conferees

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